IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 13236/2006

S.K. INDUSTRIES (P) LTD. ...Petitioner through
Mr. O.S. Bajpai with
Mr. Ram Avtar Bansal &
Mr.Mukesh Gupta, Advs.

Versus

DIRECTOR GENERAL OF INCOME-TAX(INV.) ...Respondent through
Mr. R.D. Jolly, Sr.
Standing Counsel with
Mr.Vishnu Sharma, Adv.

WITH

W.P.(C) 15824/2006

S.K. JAIN ...Petitioner through
Mr. O.S. Bajpai with
Mr. Ram Avtar Bansal &
Mr.Mukesh Gupta, Advs.

Versus

DIRECTOR GENERAL OF INCOME-TAX(INV.) ...Respondent through
Mr. R.D. Jolly, Sr.
Standing Counsel with
Mr.Vishnu Sharma, Adv.

Date of Hearing : December 06, 2006

Date of Decision : January 19, 2007

CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether reporters of local papers may be allowed to see the Judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the Judgment should be reported in the Digest? Yes

J U D G M E N T

1. Writ Petition CWP 13236/2006 was filed on 22.8.2006 challenging the legal propriety of the Search conducted sixteen months earlier, on 16.2.2005, on the ground (a) for the non-existent reasons to believe on the lines stated in clauses (a), (b) and (c) of Section 132(1) of the Act; (b) that the assessment proceedings initiated under Section 153-A of the Income Tax Act ('the Act' for short) pursuant to the Search are illegal. The Petitioner has prayed for the issuance of a writ of Certiorari quashing the Warrant of Authorisation and the said Search and for the quashing of Notice dated 10.7.2006 issued under Section 153-A of the Act. The Petition has been signed and verified by an affidavit of one of its Directors, Shri G.L. Jain, son of Late G.D. Jain, resident of 11/2A, Pusa Road, New Delhi-110 005. However, the shareholding of the Petitioner company has not been disclosed in the Petition. CWP 15824/2006 was filed on 5.10.2006 by Shri S.K. Jain (brother of Shri G.L. Jain and resident at the same address) as an individual, having also been served with the impugned Notice under Section 153-A of the Act dated 10.7.2006 praying, in substance, for the same reliefs.

2. It has been asseverated that S.K. Industries (P) Ltd. was incorporated on 5.1.1991, and is carrying on the business of manufacture of confectionery; that it has regularly filed its Return of Income and has been assessed to tax each year. It has been pleaded that the Company has paid its Tax dues. This is also the stand of Shri S.K. Jain. In the Counter Affidavit the Revenue has disclosed that the Petitioners are part of the Group companies owned and managed by S/Shri Suresh Jain, Sajal Jain, son of Shri S.K. Jain, Ganeshi Jain and Yogesh Jain. This Group comprises S.K. Industries (P) Ltd., **Harsh** International (P) Ltd. at 11/2A, Pusa Road, New Delhi-110005, Mansarover Promoters (P) Ltd. at 1/1B, Pusa Road, New Delhi, H.B. Industries (P) Ltd. and Mahak Food (P) Ltd. These facts have not been traversed in the Rejoinder and hence stand admitted. On a perusal of the Rejoinder it is evident that the shareholding in New Generation Promoters P. Ltd. was transferred in favour of "Shri G.L. Jain and his family members". The Petitioners have evaded giving details of the original shareholders in New Generation (P) Ltd. They have stated that prior to 2002 it had given the "complexes at Pusa Road" on rent to Millennium Hospital and Diagnostic Centre P. Ltd. There is a bald statement that the Shareholders, Directors, Managers and Administrators of New Generation(P)

Ltd. and Millennium Hospital and Diagnostic Centre are completely different. In the Rejoinder it has also not been controverted that Shri Sajal Jain is the son of Shri S.K. Jain [one of the Directors of the Petitioner company]; or members of his family own 1/8B, Pusa Road, New Delhi and/or 12, Pusa Road, Motor Market, New Delhi. In order to dispel all doubts pertaining to the common family ownership or Group ownership of these properties their holding ought to have been clearly and categorically stated. In respect of properties bearing Municipal No.6013/1 and 6013/3, Dev Nagar, Arya Samaj Road, New Delhi and 7/A1, W.E.A. Karol Bagh, New Delhi as well as the property at Karol Bagh the Petitioner has made a correction that these properties were not sold by Shri Sajal Jain but by his father, Shri S.K. Jain [Director of the Petitioner Company]. These pleadings and facts have been mentioned by us with a view to highlighting the nebulous nature of the dealings and ownership of properties within the Group companies. This will indubitably have a bearing on the action of the Respondents that has been assailed in these proceedings. The product that is at the fulcrum of the factual matrix is Chaini Khaini which is manufactured by **Harsh** International P. Ltd. which is stated to have commenced business from 1.2.2003. It is indeed remarkable that the shareholding of

Harsh has not been disclosed by the Petitioners. However, the records disclose that Shri G.L. Jain [64 years] is the elder brother of of Shri S.K. Jain [54 years], being the sons of late G.D. Jain, both of whom are residing at the same house i.e. 11/2A, Pusa Road, New Delhi-110005. Shri S.K. Jain has filed CW No.15824/2006 in his individual capacity and has not impleaded any of the other Group companies. It appears plain to us that if credence is to be given to the Petitioners' submission that facts pertaining to the manufacture of Chaini Khaini are irrelevant so far as S.K. Industries or S.K. Jain are concerned, the Petitioners ought to have clearly spelt out the shareholding in **Harsh**. A reading of the Rejoinder leads only to the confusion being worse-confounded; it does not set-down any foundation for the *ipse dixit* that neither of the Petitioners have any direct or indirect connection with the affairs of **Harsh**. It is, therefore, not possible even for us to cull out any meaningful distinction between the business interest and activities of the Petitioner on the one hand and the shareholders of **Harsh.** Since the Petitioners were in the best position to remove and dispel doubts and unravel the skein of common and obscure dealings, an adverse inference would have to be drawn against them.

3. On behalf of the Revenue it has been emphasised that there is no valid explanation as to why the challenge to the Warrant of Authorisation and the Search conducted thereon in February, 2005 should have been raised after sixteen long months. We are not impressed with the argument that these writ Petitions became necessary only upon the issuance of the impugned Notice dated 10.7.2006 under Section 153-A of the Income-Tax Act since the gravamen of this legal action is predicated on the Search. This would have been sufficient reason for us to dismiss the Writ Petitions as being barred by laches but since we have heard arguments in detail, we refrain from doing so. Briefly stated, the argument of learned counsel for the Petitioners is that a mere suspicion, in contradistinction to the belief that circumstances envisaged under Section 132 of the Act exist, should not be the motivation for authorising and conducting a Search. The argument is that there must be objective criteria or information having a direct nexus or live link to the persons subjected to a Search in order to justify such action being carried out by the Revenue, which action invariably has a socially deleterious impact on the persons subjected to it. This is indeed trite and the Court would always be quick to castigate the Department if it proceeds to conduct searches and/or seizures for

fishing or flippant reasons. One of the facets of the fundamental right to life is that no person shall be permitted to jeopardise or harm the honour and social standing of an innocent person.

4. On behalf of the Revenue it has been contended that the Search was initiated and completed in consonance with the law; that there was sufficient information in the hands of the Department to entertain a reasonable belief that circumstances envisaged under Section 132 in fact existed. It is the Revenue's case that the Commissioner properly possessed requisite belief, reasons whereof were duly recorded for initiating proceedings under the Act; and that the Writ Court ought not to substitute its own opinion on the subject for the one pursued by the Department. Reliance has been placed on *Income-Tax Officer, Special Investigation Circle "B", Meerut -vs-* ***Seth Brothers***, [1969] 74 ITR 836. Mr. Jolly, learned Senior Standing Counsel, has justifiably underscored the fact that malafides have not been alleged against any of the officers. Drawing strength from the observations made in the context of Sections 147/148 of the Act in *Income-Tax Officer -vs- Selected Dalurband Coal Co. Pvt. Ltd.*, [1996] 217 ITR 597 it has been contended that the veracity and correctness of the facts which persuaded the authorisation of the

Search should not be called into question in writ proceedings, at least at the present stage. A decision of this Court in *Balwant Singh -vs- R.D. Shah, Director of Inspection, Income-Tax, New Delhi*, [1969] 71 ITR 550 is more directly relevant in this regard.

5. Mr. Bajpai, learned counsel for the Petitioners, has relied very heavily on the ratio of *L.R. Gupta -vs- Union of India*, [1992] 194 ITR 32. The Division Bench of this Court was confronted with the question of what would constitute tangible material to justify the authorisation of a Search or Seizure. It was observed that information must be more than mere gossip, or rumour or a hunch. Mere failure to file Returns of net wealth and income would not justify such an action as it may not invariably disclose the rational connection for concluding that the assessee did not want the Department to gain knowledge of the existence of his assets or income. It was also observed that a Search conducted under Section 132 of the Act is a serious invasion into the privacy of a citizen and, therefore, must stoutly be construed in a manner conducive for the protection of the citizen. The opinion must be apparent from the Note recorded by the Officer and it must clearly manifest that the belief falls under clause (a), or (b) or (c) of Section 132(1). In that case the Petitioner, who is a Senior

Advocate of this Court, had received compensation in respect of the acquisition of his property and this money was utilised by him for the purchase of Bonds and for buying immovable property. This compensation had become payable in 1987 pursuant to a decision of the Division Bench of this Court and hence could not possibly have partaken of the character of unaccounted income. This, in our opinion, constitutes the watershed between this case and others. The Department had sought information regarding the expenses incurred on the marriage of the Petitioner's son, which had been duly and sufficiently supplied. Nevertheless, two Inspectors of the Income-Tax Department visited the premises on March 21, 1991 and asked the Petitioner to supply documents in the Office of the Income-Tax Officer on the following day. However, on that day itself a Search took place in the presence of a large police contingent. It was in those circumstances that the Division Bench opined that merely because the person does not file a Return or does not disclose true income and wealth, an authorisation under Section 132(1) of the Act cannot be issued. It was noted that no satisfaction had been indicated in the Note that the petitioner would not produce or cause to be produced any books of accounts, documents etc. Unlike in these cases before us, no convert dealings had been unearthed that were

attributable to Shri L.R. Gupta.

6. An earlier case, in which another Senior Advocate had to suffer the scourge of a senseless Search, namely *H.L.* ***Sibal*** *-vs- Commissioner of Income-Tax, Punjab*, [1975] 101 ITR 112, has also been cited by Mr. Bajpai. What impressed, or rather disturbed, the Division Bench of the Punjab and Haryana High Court were the pleadings of the Department disclosing the reasons for the Search. So far as the Department was concerned it was obvious that its actions were predicated on the unsubstantiated belief, or rather suspicion, that advocates in Chandigarh were not disclosing their true income and wealth; the Petitioner being one of them. In other words no concrete 'information' particular or personal to the Petitioner, was available with the Department; the Search was a consequence of a policy decision, and “the dominant object of the Respondents was to pass an order under section 132(5) of the Act regardless of whether such an order could or could not have been passed in the eyes of the law”. The Court extracted the following passage from the landmark judgment of the Supreme Court in *Pooran Mal -vs- Director of Inspection(Investigation), Income-Tax, New Delhi*, [1974] 93 ITR 505(SC) in which the constitutionality of Section

132 of the Act was unsuccessfully called into question:-

> We are, therefore, to see what are the inbuilt safeguards in section 132 of the Income-tax Act. In the first place, it must be noted that the power to order search and seizure is vested in the highest officers of the department. Secondly, the exercise of this power can only follow a reasonable belief entertained by such officer that any of the three conditions mentioned in section 132(1) (a), (b) and (c) exists. In this connection it may be further pointed out that under sub-rule(2) of rule 112, the Director of Inspection or the Commissioner, as the case may be, has to record his reasons before the authorisation is issued to the officers mentioned in sub-section(1). Thirdly, the authorisation for the search cannot be in favour of any officer below the rank of an Income-tax Officer. Fourthly, the authorisation is for specific purposes enumerated in (i) to (v) in sub-section (1), all of which are strictly limited to the object of the search. Fifthly, when money, bullion, etc. is seized the Income-tax Officer is to make a summary enquiry with a view to determine how much of what is seized will be retained by him to cover the estimated tax liability and how much will have to be returned forthwith. The object of the enquiry under sub-section (5) is to reduce the inconvenience to the assessee as much as possible so that within a reasonable time what is estimated due to the Government may be retained and what should be returned to the assessee may be immediately returned to him. Even with regard to the books of account and

documents seized, their return is guaranteed after a reasonable time. In the meantime the person from whose custody they are seized is permitted to make copies and take extracts. Sixthly, where money, bullion, etc., is seized, it can also be immediately returned to the person concerned after he makes appropriate provision for the payment of the estimated tax dues under sub-section (5), and, lastly, and this is most important, the provisions of the Criminal Procedure Code relating to search and seizure apply, as far as they may be, to all searches and seizures under section 132. Rule 112 provides for the actual search and seizure being made after observing normal decencies of behaviour. The person in charge of the premises searched is immediately given a copy of the list of articles seized. One copy is forwarded to the authorising officer. Provision for the safe custody of the articles after seizure is also made in rule 112. In our opinion, the safeguards are adequate to render the provisions of search and seizure as less onerous and restrictive as is possible under the circumstances. The provisions, therefore, relating to search and seizure in section 132 and rule 112 cannot be regarded as violative of articles 19(1)(f)and (g).

7. The ***Sibal*** case also observes that there is parity between the provisions of Sections 132 and 147 of the Act. Founded thereon, Mr. Bajpai contends that the extracted opinion of the Apex Court in *Income-Tax Officer, I Ward, Distt. VI, Calcutta -vs-*

Lakhmani Mewal Das, [1976] 103 ITR 437 with regard to Section 147 is applicable in full force to Section 132 proceedings:-

> As stated earlier, the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income-tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and far-fetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. The fact that the words "definite information" which were there in section 34 of the Act of 1922, at one time before its amendment in 1948, are not there in section 147 of the Act of 1961, would not lead to the conclusion that action can now be taken for reopening assessment even if the information is wholly vague, indefinite, far-fetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence.

Predicated on this passage it is argued that since the Search had its causation in the Chaini Khaini manufacture, it had no connection with the Petitioner's business which is preparation of fruit jelly. We cannot accept this argument since it is obvious that the commonality is not in the nature of the business but in their ownership. As already noticed, at this stage, the operation of the various Jain businesses are so intermingled and intertwined as to render them almost undistinguishable. The facts in *Sardar Parduman Singh -vs- Union of India*, [1987] 166 ITR 115 were that the Department had received information that two other persons had amassed huge undisclosed wealth which had been invested in acquiring on pugree premises No.235, Lajpat Rai Market, Delhi. It was held that the sealing of this property which was in the possession of the Petitioner was totally unjustified and unsustainable. Reliance on this Judgment is again futile since it has not been adequately clarified that there are no common business dealings or joint ownership of property between the Petitioners and other members of the Jain family. For the very same reasons *Kusum Lata -vs- Commissioner of Income-Tax*, [1989] 180 ITR 365 in no way advances the Petitioners case. *Sunil Kumar Jain -vs- Income Tax Officer*, [2006] 284 ITR 626 contains an analysis of the plethora of

precedents on these provisions of the Act and reiterates that the "reasons" for action under Section 147 must be based on relevant material which must not be sustained simply on the subjective satisfaction of the concerned officer.

8. In Commissioner of *Income-Tax -vs- Vindhya Metal Corporation*, [1997] 224 ITR 614(SC) their Lordships were concerned with the impounding of Rs.4,63,000/- from the possession of the Munim of a firm while travelling to Calcutta, assuming the money to be stolen property. The Railway Police thereafter informed the Commissioner of Income-Tax who forthwith issued a Warrant of Authorisation under Section 132(1) of the Act authorising the Income-Tax Officer concerned to receive the money from the Railway Police. Upon a Search being conducted on the premises of the company the fact that the Munim was in possession of moneys of the firm that were duly accounted for came to be affirmed. It was held that in this factual matrix no reasonable person could have entertained the belief that the money represented income which would not have been disclosed had details been asked for. These facts palpably have no relevance to the case before us. The Gauhati High Court in *M.S. Associates -vs-Union of India*, [2005] 275 ITR 502 has

gone to the extent of holding that if information is received from proceedings of the legislature that a Member of the House is involved in evasion of money, if the authorities concerned have reason to believe the information so received is true, it is their bounden duty to act thereupon. It has been further held that if the authorities are not in a position to know whether the information/accusation is true or not, they are not barred from making investigations to find out the truth or veracity of the information received by them. Therefore, the expression "reason to believe" under Section 132 is subjective and objective. The dicta in ***Seth Brothers***, that the power exercised by the Commissioner under Section 132 is not a judicial or quasi-judicial power and the Court cannot substitute its own opinion for that of the Commissioner, was applied. It was also noted that no malafides or malicious intent attributable to the Department had been made out. The challenge to the issue of Warrants of Authorisation for Search and Seizure was found to be baseless.

9. The decision in *Lajpat Rai -vs- Commissioner of Income Tax*, [1995] 215 ITR 608, is indeed apposite. The Writ Petition was filed by Lajpat Rai, and his wife and mother as Petitioners No.2 and 3. It appears that the Search was primarily directed

towards the business and residential premises of Shri Subhash Chandra Varshani at Kandra, Calcutta, Madras and Baroda and at his other sales and business premises in different parts of the country. It was in that regard that the residential premises of the Petitioners were also raided. However, no "appreciable" properties or documents were found so far as the Petitioners were concerned, but the key of a locker of Petitioners No.2 and 3 was impounded. The case of the Department was that Petitioner No.1 was supplying silica to Shri Subhash Chandra Varshani. Mrs. Varshani was a Director in the Petitioner/Lajpat Rai's Company and they had mutual business transactions. The Court concluded that the close relationship between Lajpat Rai and Varshani who was the focus of the Search "would certainly lead one to believe that, in the ordinary course, petitioner no.1 [Lajpat Rai] would not comply with the notice under the Income-Tax Act and produce the material in his possession which would be adverse to the company and the said relatives". The Search which had already been simultaneously conducted was found to be legal and impervious to quashing. However, so far as the Locker was concerned, the Court came to the conclusion that it did not bear direct nexus to the Varshani businesses and hence could not be searched. This decision obviously supports the

action of the Revenue.

10. Our attention has been drawn by Mr. Jolly to *Harvest Gold Foods (India) P. Ltd. -vs- Union of India*, [2006] 282 ITR 83 where the Court returned the finding that the Department was in possession of reasonable and credible information to justify a Search. The entire case law was set down by the learned Judge and thereafter applied. Significantly, reference has been made by the Petitioners to the Guidelines laid down by the Central Board of Direct Taxes that a Search should be carried out only where there is credible evidence to indicate substantial unaccounted income/assets in relation to the tax normally paid by the assessee where the expected concealment is more than one crore. So far as the Department was concerned it had stated that the Search and Seizure had been authorised by the Director General of Income-Tax [Investigations] after careful examination of information, evidence and material.

11. It is in the backdrop of this exposition of the law that we have to decide the rule whether the Search that has been conducted was legal. As has already been indicated above, the maze of commercial dealings between various companies owned

by the Jain Group, of which the Petitioners presently appear to be an integral and inseparable part , was sufficient justification for a simultaneous Search being conducted on all the businesses. In our considered opinion it is not possible to conclude that the Department had initiated a roving enquiry to allay or satiate their suspicions. It has been sufficiently pleaded that as a consequence of the surveillance carefully carried out over a period of time it had been noted that the Returns filed in the Chaini Khaini business did not match either the output capacity of the packaging machinery or the numerous assets built-up and acquired by the Jain family. In these circumstances it would be unreasonable to expect that a Search would have been restricted only to the family concerns dealing in the Chaini Khaini business since income or profits or assets could well have been spread, or for that matter concealed, throughout the family concerns. It is conceivable that if all the group companies and shareholders had not been simultaneously searched the exercise would have remained stillborn and futile. There was, in our opinion, sufficient material to come to an objective as well as subjective reasonable belief that a Search under Section 132 was justified and necessary. The information available with the Department need not have been disclosed as has been held in *Dr. Pratap Singh -vs-*

Director of Enforcement, AIR 1985 SC 989=[1985] 155 ITR 166 SC. The Search was not in the nature of a roving or fishing enquiry.

12. Writ proceedings cannot be employed as a surrogate or indirect challenge to the existence or the adequacy of reasons to believe that action under Section 132 was called for. It has not been controverted that in the Notice issued under Section 153-A of the Act all materials and particulars relied upon by the Department have been disclosed. We also find the delay in approaching this Court to be significant. We cannot ignore the fact that the Petitioners have not challenged the Summons issued under Section 131 of the Act which were issued subsequent to the Search. Instead of approaching this Court the Petitioners should fully participate in the proceedings under Section 153-A and vindicate its stand that it has no appreciable connection with the other business family concerns. We find no reasons to exercise the extraordinary powers vested in this Court under Article 226 of the Constitution of India.

13. The writ proceedings were filed on 22.8.2006[CWP No.13236/2006] and on 5.10.2006[CWP No.15824/2006]. During

the pendency of these proceedings the Assessing Officer, in our opinion, would not have been able to conduct and complete the original proceedings. Hence the period of limitation set-down in the statute stands extended by four months.

14. Writ Petitions are dismissed. This is a fit case for the imposition of exemplary costs against the Petitioners, but we order the Petitioners to pay nominal costs of Rs.15,000/- to the Respondents within six weeks.

(VIKRAMAJIT SEN)
JUDGE

January 19, 2007
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(S. MURALIDHAR)
JUDGE